

August 18, 2014

Marlene G. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street N.W.  
Washington, DC 20024

re: Comments of Proximiti Technologies, Inc. in WC Docket No 14-104  
Application of Transfer of Control of TW Telecom, Inc. to Level 3 Communications, Inc.

Proximiti Technologies, Inc. ("Proximiti" - FRN: 00016431603) through its subsidiary corporations has provided innovative VoIP based retail and wholesale communications and enhanced services since its inception in 2005. Its retail operating units, Proximiti Communications, Inc. and Go Solo Technologies of Florida One, Inc. provide small business and SO/HO operations with communications services and applications with emphasis on enhanced business-to-consumer calling platforms that utilize VoIP services in a manner that maximize utility and value. Proximiti's SipStorm, Inc., ("SipStorm") subsidiary provides services to select wholesale customers and in many instances also acts a vendor interface for the entire Proximiti family of companies.

In providing services to our retail and wholesale subscriber base, Proximiti, through our SipStorm subsidiary, purchases a significant level of services from both Level 3 Communications, Inc. ("Level 3") and tw telecom, inc. ("TWT"). To this end, Proximiti believes that it is somewhat uniquely positioned to comment on the public interest issues associated with the proposed Application of Transfer of Control of TWT to Level 3.

Proximiti currently operates under a Master Service Agreement between SipStorm and Level 3 Communications, LLC signed in October of 2004. We have been a continual customer of Level 3 since the original contract was signed. Services purchased under the contract include among other items: collocation, interconnection, DIDs, toll free numbers, internet transport and VoIP origination and termination. Over the course of the last 36 months, Proximiti has paid more than \$1.4M in fees and service charges to Level 3 under our Master Service Agreement.

Proximiti is also a long term customer of TWT with the original term of service dating back to a Service Order issued by SipStorm to TWT in November of 2004. Service was renewed formally in 2010 and 2014 via Renewal Service Order Forms. Services purchased from TWT include local dial tone and associated service, T1 interconnection, internet connectivity and long distance services. Over the course of the last 36 months, Proximiti has paid more than \$300k in fees and service charges to TWT under our service arrangements with them.

Through December 2013, Proximiti would characterize the relationship it had with Level 3 as "good". Except for occasional disputes associated with billing and fraud, operational problems between our companies were minimal. From our perspective, Level 3 provided "carrier grade" services at market prices.

Level 3 network performance began a marked deterioration in December of 2013. As itemized in Attachment I, Proximiti has endured nine (9) significant outages involving the Level 3 network since December 26, 2013. Each of these outages has significantly impacted Proximiti retail or wholesale service offerings. The outage on August 12<sup>th</sup>, lasted thirteen (13) hours and impacted over 200k of our wholesale voice mail customers. Particularly troubling is the fact that Level 3 has encountered four (4) outages alone over roughly the last 60 days. Outages have taken place despite the supposed redundant nature of the Level 3 network. The impact of such outages upon small carriers such as Proximiti who are dependent upon these supplier relationships to provide end user services cannot be overstated and must be considered in looking at whether the public interest would be served by allowing the transfer of control of TWT to Level 3.

Proximiti has had a good working relationship with TWT. The service provided by TWT has remained consistent for several years with minimal service issues. Because of our unique architecture where we utilize TWT in providing service to select hybrid-fiber customers, we are solely dependent upon TWT in meeting dial-tone requirements for those customers. Any TWT service interruption would have an immediate service impact to this base of customers. We are therefore extremely sensitive to any change in TWT operating processes and procedures that might impact operations. Based upon our recent experiences with Level 3, Proximiti strongly believes that it would not be prudent to subject the TWT customer base to the current operational methods and procedures of Level 3. Over the course of 2014, Level 3 has repeatedly failed to take normal and customary steps to protect and secure their operational network. In the case of our TWT services, we have no viable work-around or back-up facilities. Subjecting the TWT services to current Level 3 operating methods and procedures would be an invitation to operational outages and failures which would be service impacting. This would not be in the public interest.

Our recent outage experience of August the 12<sup>th</sup> might help illustrate the potential risk that TWT customers might face should the TWT acquisition be allowed. At roughly 3am EDT on that morning or before, Level 3 implemented a "configuration change in a route reflector" within their network environment. The network software revision failed causing an outage situation. Relative to Proximiti, the outage situation involved a Level 3 trunk utilized to forward toll free service associated with voice mail services of our wholesale customers involving over 200,000 end users. In this particular instance, while the trunk involved in the failure was a Level 3 service, the toll free service is provided by another carrier. At 3am, Proximiti became aware of an outage situation and at 4am Proximiti began receiving customer service calls. The first step in such a situation is fault isolation. Level 3 technical assistance was non-compliant. Level 3 refused to confirm that a maintenance window had been open. Level 3 refused to acknowledge that routes would not complete traffic as directed. Level 3 refused to provide alternate routing information. Level 3, in fact, did not provide any information concerning the outage (including a service restoral notice) until one hour after their asserted restoral time. Total time from the start of the outage to service restoral was roughly thirteen (13) hours. However, because Level 3 did not promptly notify Proximiti that the Level 3 network had been reverted and was now working properly, the actual impact upon Proximiti continued while we worked and maintained the work-around processes and procedures as we assumed the Level 3 network was still non-operational. We are still awaiting a RFO (Reason for Outage) from Level 3 explaining the August 12<sup>th</sup> situation. Subjecting TWT customers to this type of operational environment would not be prudent.

Relative to the August 12<sup>th</sup> outage, Level 3 and any Tier I or Tier II carrier would and should have taken steps to mitigate and resolve the outage situation in more reasonable manner. Level 3 should have given advance notice to underlying carriers of its intent to undertake network maintenance/upgrades. Level 3 should have given underlying carriers notification/confirmation of a network outage rather than denying an outage situation was occurring. Level 3 should have reverted the network to its prior state prior to the start of the normal business day. Level 3 should have given underlying carriers notification of which routes were/weren't impacted by the network failure so that alternative routing could be implemented. Level 3 should have given underlying carriers updates relative to the status of the software revert. Level 3 should have given underlying carriers immediate notice when the software revert was completed and routes were reestablished so that normal routing could be resumed. Such steps are basic Telecommunications 101. Failure to take such measures fully illustrates that Level 3 services have fallen to the point that they now fail to meet generally accepted standards for commercially provided telecommunications services. Level 3 is no longer a Tier 1 or Tier 2 carrier based upon quality of service provided. Such deterioration of service should not be allowed to migrate to TWT through merger.

Of further concern is Level 3's lack of action in addressing their customer's distress over the outages. Over the course of 2014, Proximiti has escalated the outage issue progressively through higher levels of management with no apparent success. Despite assurance at the Level 3 Vice Presidential level that no maintenance would be initiated without advance notice, that no Proximiti circuits or series would be "touched" without notice, that all service patches and upgrades would be fully tested in the lab before deployment, etc., these procedures have not been followed. As evidenced by Attachment II, Proximiti was moved to the point on July 22<sup>nd</sup> to request that Level 3 memorialize their network operational methods and procedures in writing in order to ensure that further management commitments on

the part of Level 3 were fully documented. To date, Level 3 has not responded to our July 22<sup>nd</sup> request. Based upon the current state of Level 3 customer service, replacing the TWT customer service experience with that of Level 3 would represent a significant step backward. Such a step backward would not be in the public interest.

From the perspective of a long-time customer, Level 3 has been stretched too thin. As evidenced by network failure after network failure in 2014, Level 3's services fail to meet the standards for commercial grade telecommunications services and are no longer "carrier grade". Over the course of the last eight months, Proximiti alone has experienced over 3000 minutes of outages related to Level 3 services. In some instances we have had over 200k customers impacted by a single outage. Frankly, Level 3 service is much closer to providing service at a SLA of 99.0% than the anticipated Tier 1 or Tier 2 Carrier service level of 99.99%. Until such time as Level 3 can show substantial service performance improvement over a prolonged period of time, the Commission should suspend any consideration of an expansion of Level 3's service via acquisition. Further subjecting Proximiti's and other small carrier's dial-tone dependent environments provided by TWT to Level 3's current operational methods and procedures would not be prudent and would definitely not be in the public interest. The vibrancy of smaller carriers such as Proximiti who are dependent upon the services of TWT should not be risked by allowing the acquisition of TWT by Level 3.

Sincerely,



Donald C. Davis  
CFO

Attachments

cc: Best Copy and Printing, Inc.  
Dennis Johnson  
David Krech  
Neil Dellar

Recent Trouble Ticket of Note  
Proximiti Technology, Inc. Filed with Level 3 Communications, Inc.

Outage Date	Outage Start	Outage End	Outage Duration (Hours: Minutes)	Level 3 Ticket #	Evaluation and RFO (Reason For Outage Response)
8/13/14	7:43 PM	4:14 PM	20:31	8245384	Partial outage impacting limited SMB customers. IP circuit issue.
8/12/14	3:00 AM	4:00 PM	13:00	8237534	Partial outage impacting wholesale Voicemail services. Route Reflector Config Issue – still awaiting L3 Closing of Ticket
7/22/14	8:00 AM	9:37 AM	1:37	8162103 8162712	Total outage. L3 representative reported the outage was apparently caused by human error.
7/3/14	9:30 AM	12:15 PM	2:45	8090698 8090145	Partial outage but total outage for certain Proximiti customers. L3 trouble was isolated to a metric adjustment that was made in error at 13:24 this morning. The metric adjustment caused traffic from the Miami market area to route through Orlando increasing traffic flow on this router, and resulting in various performance quality issues such as latency and packet loss for Level 3 customers.
6/13/14	1:00 PM	3:00 PM	2:00	8020182	Partial outage - inbound calling only. Several Proximiti customers reporting high latency and packet loss. Outage tied to fiber cut in New Orleans. Redundant routing an issue. Issue resolved before Level3 looked at our ticket. Acknowledgment ticket was being worked was not until 9:16pm - 7.5 hours later
5/5/14	4:00 PM	6:25 PM	2:25	7881164	Partial outage. Calls from certain carriers (ATT to Level3) not being able to complete inbound calls to several of our customers. Per Level3: "There is an event in this market" and further that one of their switches is experiencing issues
4/28/14	11:40 AM	12:00 PM	0:20	7807515	Total outage. Per Level3: "There is one router impacted at this time, Affecting services. Technician accidentally removed the incorrect card from each of the two backbone routers"
3/13/14	4:00 AM	12:45 PM	8:45	7645184	Total VoIP outage. 200 size byte packets were failing. The root cause was introduced by Level3 when they made a change this morning at 4 EDT to add IP Network capacity to their core network.
12/26/13	9:55 AM	2:55 PM	5:00	7364171 7363426	All Local inbound calls failing. Per Level3: "This issue was related to L3 router problems out of MacLean VA. Router was bouncing. Card problem found."

PROXIMITI

July 22, 2014

Andrew Crouch  
Regional President, North America  
1025 Eldorado Boulevard  
Broomfield, Colorado 80021

re: Recent Failure of Level 3 Network to Meet Commercial Reasonableness Standards

Proximiti Technologies, Inc. ("Proximiti") purchases services from Level 3 Communications, LLC ("Level 3" under a Master Service Agreement ("MSA") signed between Level 3 and one of Proximiti's affiliates (SipStorm, Inc.) in 2004. After recent multiple outages, including one which occurred this morning, Proximiti must declare Level 3 in breach of the MSA's provision that Level 3 will maintain "...facilities in good working order." Furthermore, Proximiti gives notice that services as currently provided by Level 3 under the MSA fail to meet generally accepted standards for commercially provided telecommunications services of a Tier I or Tier II carrier. In order to meet the requirements of the MSA, Proximiti demands that Level 3 present by August 15, 2015 an action plan on the internal steps Level 3 is taking to restore service to a commercially acceptable level and therefore provide services "in good working order".

I cannot overstate to you the implications of these outages to our business. If you have any questions relative to our concerns, please feel free to contact me at (813) 579-1036 or [don.davis@proximiti.com](mailto:don.davis@proximiti.com).

Sincerely



Donald C. Davis  
CFO

cc: John Treece  
Jorge Magna  
Bryce Hansen